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21 *And Linda Johnson Rice*

22 UNITED STATES DISTRICT COURT

23 NORTHERN DISTRICT OF CALIFORNIA

24 IN RE TESLA, INC. SECURITIES
25 LITIGATION

26 Case No. 3:18-cv-04865-EMC

27 **DECLARATION OF MICHAEL T. LIFRAK**
28 **IN OPPOSITION TO PLAINTIFF'S**
"EMERGENCY" MOTION TO COMPEL

DECLARATION OF MICHAEL T. LIFRAK

I, Michael T Lifrak, declare as follows:

1. I am a partner at the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Defendants in this action. I make this declaration in support of Defendants' Opposition to Plaintiff's Motion to Compel the Testimony of Dave Arnold. I know the facts stated herein of my own personal knowledge, and if called as a witness, I could and would testify competently thereto.
2. Consistent with the Court's directive that the parties meet and confer regarding the order and timing of witnesses, on the evening of Tuesday, January 24, 2022, I spoke with Plaintiff's counsel by telephone regarding upcoming Plaintiff's witnesses and the order in which they would be called to testify.
3. During that conversation, Mr. Apton advised me that Plaintiff intended to call the following witnesses on the following days:
Wednesday, January 25: Deepak Ahuja, Joseph Fath (by designation), and Antonio Gracias.
Friday, January 27: Egon Durban, Dan Dees, Robyn Denholm, Ryan Brinkman (by designation), and Brad Buss.
Tuesday, January 31: Steve Heston, Michael Hartzmark.
4. Mr. Apton did not mention Mr. Arnold on the call.
5. As a result, Defendants informed Mr. Arnold that he would no longer be needed as a witness in the case.
5. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from Volumes 1 and 2 of the Transcript from the Deposition of Dave Arnold in this case.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

[signature page follows]

1 Executed this 26th day of January, 2023 in San Francisco, California.
2

3 By: /s/ Michael T. Lifrak

4 Michael T Lifrak
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EXHIBIT A

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Confidential

Page 1

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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)
 IN RE TESLA, INC.) Civil Action No.
) 3:18-cv-04865-EMC
 SECURITIES LITIGATION)
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CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

VIDEOTAPED DEPOSITION OF DAVID ARNOLD

VOLUME I

APPEARING VIA VIDEOCONFERENCE FROM

PALM SPRINGS, CALIFORNIA

THURSDAY, SEPTEMBER 30, 2021

9:01 A.M. - 2:17 P.M. PST

STENOGRAPHICALLY REPORTED BY:

CHERYL ASADA

CA CSR NO. 13496

WA CCR NO. 21000937

FILE NO. 200187

1 were, and so yes, that was in person when we met with
2 them.

3 Q Okay. Where did that meeting take place?

4 A That would've been in the Dumbarton office as
5 well.

6 Q Okay. That was in a conference room?

7 A Yes. As far as I recall, yes.

8 Q Okay. And you had one meeting with Todd
9 Maron and Deepak Ahuja together?

10 A I don't recall if it was one meeting or if
11 it -- you know, one or both of them may have gone in
12 and out, but it was -- those are the two that I
13 remember, yeah.

14 Q And at this time, did you develop a strategy
15 for responding to media inquiries that might come in
16 as a result of this tweet?

17 A My recollection is that we were discussing a
18 potential blog post that would have more information.

19 Q Do you recall whose idea it was to do a blog
20 post?

21 A I don't recall.

22 Q Was it your idea?

23 A I -- I -- again, I don't recall.

24 Q And -- and who -- who drafted this blog post?

25 A I believe it was largely Todd. I think it

1 was, sort of, a collaborative process, as I recall.

2 Q Did you have -- did you review the draft blog
3 post before it was posted?

4 A I did.

5 Q Okay. Did you make any edits to it?

6 A I don't recall. I -- I imagine I weighed-in
7 on it.

8 Q You imagine you weighed-it on it?

9 A Yeah, correct.

10 Q Okay.

11 A Offered my perspective.

12 Q Do you recall how that draft was circulated?

13 A I don't. I imagine it would've been over
14 e-mail.

15 Q Okay. Did it come in -- did it come as a
16 Word document, which you then edited, or how did you
17 provide your comments?

18 A I don't recall. I think it -- we may have
19 just been in the room doing it together.

20 Q Okay. So you're in a room with Mr. Ahuja and
21 Mr. Maron and Sarah O'Brien?

22 A Correct.

23 Q And one person who was just writing down the
24 collective ideas or thought of the group?

25 A Again, I don't recall exactly the mechanics

1 of it, but something to that effect, I believe.

2 Q Do you know if the document was being shown
3 up on a screen that you could all see?

4 A I don't recall.

5 Q Do you recall how long it took to draft the
6 blog post?

7 A I don't. I -- maybe an hour or two. I don't
8 recall exactly.

9 Q While -- while you were drafting the blog
10 post, you were receiving media inquiries at the same
11 time?

12 You need to say "yes" or "no." Sorry.

13 A Yes, yes.

14 Q Okay. And what were you doing with those
15 media inquiries?

16 A Nothing.

17 MR. PORRITT: Elizabeth, can you bring up
18 Exhibit 9.

19 You know what, strike that. Sorry, Skip
20 Exhibit 9. Go back to Exhibit 8.

21 BY MR. PORRITT:

22 Q Did you know -- well, on the morning of
23 August 7th, where was -- do you know where Elon Musk
24 was?

25 A I don't recall.

1 list?

2 A I don't know exactly who was on that, but it
3 was our executive team, as I recall.

4 Q Okay. Was Elon Musk on that distribution
5 list?

6 A I believe so.

7 Q You'll see here in Exhibit 303 -- well, first
8 of all, this paragraph is saying -- you know, you
9 start off "FYI," and then you say, "following up blog
10 post." And then there's a remaining paragraph.

11 Are those -- is that something that you
12 wrote?

13 A Most likely, that is something -- as we saw
14 in some previous e-mails, there's an employee named
15 Erica Chen who, one of her responsibilities was to,
16 sort of, collate coverage. I suspect that she -- she
17 drafted this.

18 Q Okay. But you would have read it before
19 putting it into this e-mail around to the ExecStaff?

20 A I would have likely scanned it. Probably
21 unlikely that I read the whole thing word-for-word.

22 Q You'll see here in that first paragraph, it's
23 written:

24 "The predominant theme throughout
25 coverage is that the e-mail 'did not make

UNITED STATES DISTRICT COURT
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CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

VIDEOTAPED DEPOSITION OF DAVID ARNOLD
VOLUME II

APPEARING VIA VIDEOCONFERENCE FROM

PALM SPRINGS, CALIFORNIA

THURSDAY, FEBRUARY 24, 2022

8:04 A.M. - 11:11 A.M.

Stenographically Reported by:

Tami L. Le, CSR No. 8716, RPR

Job No. 207086

1 Yes, I have it now.

2 Q. BY MR. PORRITT: Okay. And you recall
3 receiving this email from Ms. Mumtaz?

4 A. I'm reading it now. I don't -- I don't
5 recall this at the time, but I see it now.

6 Q. Okay. You'll see there in the email,
7 third line down -- or third paragraph down, it says:

8 "A Tesla spokesman declined to
9 comment."

10 Do you see that?

11 A. Yes.

12 Q. Is that you?

13 A. I don't recall who that would have been.
14 It could have been me or another member of the
15 communications team.

16 Q. Do you recall having communication with
17 Reuters regarding this news article?

18 A. Vaguely, not off the top of my head.
19 There were a lot of -- as you can imagine, at the
20 time there were hundreds of media inquiries, surely
21 several from Reuters. I don't recall this
22 specifically.

23 Q. What do you recall generally about
24 newspaper inquiries at this time in connection with
25 the involvement of the Saudi Public Investment Fund.

1 A. I know that was a -- obviously a topic
2 of interest among media. I mean, they were -- you
3 know, following the tweets of August 7th, there were
4 lines of questioning from seemingly every
5 conceivable angle, from all sorts of reporters and
6 outlets, including Reuters.

7 Q. What do you mean by "every conceivable
8 angle"?

9 A. Surely not every conceivable angle, but
10 it's -- we were getting, like I said, dozens, if not
11 hundreds, of inquiries asking, you know, numerous
12 questions about the tweets, about what was -- you
13 know, the events leading up to it, wanting more
14 information, so on, so forth.

15 Q. Okay. Do you recall what some of those
16 questions were?

17 A. I mean, again, there were dozens, if not
18 hundreds, you know, primarily people wanting more
19 information. It seemed that reporters were trying
20 to track down every, you know, source that they had
21 that might be able to provide more information, and
22 then coming to us and, you know, asking for
23 confirmation or statements. You know, this was the
24 news topic of interest, obviously, for a number of
25 outlets.

1 Q. And were these inquiries concerning the
2 funding for the proposed transaction?

3 A. As I recall, some were, yes.

4 Q. Were they also about the investor
5 support for the transaction?

6 A. I believe some were, yes.

7 Q. Do you recall any other specific topics
8 that came up about the transaction?

9 A. I mean, there were -- it was a bit of a
10 blur. I mean, again, there was a flurry of
11 inquiries. There were questions about, you know,
12 the board and what they thought about it. There
13 was, you know, questions about whether we were going
14 to have any more information we were sharing. There
15 was -- there was a number of inquiries.

16 Q. And what -- at this time, so this is
17 over the weekend, this is on Saturday, August
18 the 11th, but at this time what was your approach to
19 responding to these media inquiries?

20 A. Primarily it was to refer people back to
21 the blog that we had. I believe we had published a
22 blog on the 7th. I know there were -- again,
23 apologies, my memory is a little bit hazy in terms
24 of the cadence and the timeline. But I know at some
25 point, there was another follow-up blog that we had,

1 MR. PORRITT: All right. So I placed
2 before the witness a document previously
3 marked as Exhibit 16.

4 Q. BY MR. PORRITT: Do you recognize this
5 document, Mr. Arnold?

6 A. I do. This would have been, I believe,
7 the second, but, you know, one of the blog posts
8 that we posted on the Tesla website about the
9 going-private transaction and sharing an update in
10 more detail.

11 Q. Okay. And I think you testified that
12 your -- in your first -- well, you know, forget
13 about what you testified to first. Let's just go
14 with what you remember now.

15 Were you involved in drafting this blog
16 post?

17 A. I, as I recall, worked with Todd Maron,
18 our general counsel, my -- one of my colleagues on
19 the comms team. As I recall, Todd was the primary
20 drafter. But, you know, we, as in we on the comms
21 team, would have weighed in and offered our
22 perspective and perhaps -- perhaps helped with some
23 of the language and so on and so forth. But, yes, I
24 was involved.

25 Q. Okay. Who else -- who was the other

1 colleague?

2 A. As I recall, Sarah O'Brien worked on
3 this as well.

4 Q. Okay. Do you know anyone else who
5 worked on it other than Sarah O'Brien and Todd
6 Maron?

7 A. I -- not specifically. I -- I imagine
8 Deepak Ahuja would have worked on this, but I don't
9 recall. That's speculation.

10 Q. Do you recall how long it took to draft
11 this statement, Exhibit 16?

12 A. I don't, I'm afraid.

13 Q. What was your basis for the -- for
14 assessing the factual statements contained in this
15 blog post?

16 A. Well, I'm clearly not subject-matter
17 expert on this, so, you know, we, on the
18 communications team, were relying on -- on others
19 for the information. And so I think, you know, Todd
20 Maron was the primary -- the primary person who was
21 providing the factual and substantive information,
22 as I recall.

23 Q. Okay. Do you recall if anyone else was
24 providing substantive factual information for this
25 blog post?

1 A. I -- I -- I don't recall specifically.
2 It -- it wouldn't surprise me if there was others,
3 but I -- I think it was primarily Todd.

4 Q. Okay. Now, this is -- this blog post is
5 written in the first person; correct?

6 A. It is.

7 Q. Okay. And it's -- Elon Musk has the
8 byline, so to speak?

9 A. Correct.

10 Q. Do you know why Todd Maron and yourself
11 and Sarah O'Brien were drafting a document that was
12 being issued in the name of Elon Musk?

13 A. I don't think -- in my experience,
14 anyway, speaking generally, I don't think that's
15 particularly unusual if, you know, an executive is
16 going to put out -- if you see a blog post or a
17 statement from an executive, you know, sometimes --
18 not always, but that's -- that's not infrequently
19 drafted with the assistance of, you know, members of
20 the communications team, legal, so on and so forth.
21 And so I sort of put this in that same category.

22 Q. What do you mean by the "same category"?
23 As a statement by Tesla's CEO?

24 A. Yeah, correct, a statement by Elon Musk
25 that, you know, he, as I recall, you know, would